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January 21, 2021

VIA E-FILING

Hon. Eric R. Komitee, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

RE: *Calderon v. Royal Elite Palace Caterers, LLC, et al.* – Case No.: 21-cv-6367(EK)(MMH)

**LETTER MOTION FOR VOLUNTARY DISMISSAL OF DEFENDANTS ELITE
PALACE LLC, ABHI VAYNSHTEYN, SIMON ALISHAEV, 6902 GARFIELD
AVENUE LLC AND IGOR TSAN**

Dear Judge Komitee:

This firm represents Plaintiff, Alicia Calderon. After discussions with the above-named Defendants, the Plaintiff has determined that there is no longer a reasonable basis for the claims against these Defendants to proceed. Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff requests that the Court order dismissal with prejudice of Defendants Elite Palace, LLC, Abhi Vaynshteyn, Simon Alishaev, 6902 Garfield Avenue LLC and Igor Tsan, without fees or costs to any party.

A federal trial court may dismiss an action, at the plaintiff's request, "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Unless the order states otherwise, the dismissal is without prejudice. *Id.* Where the voluntary dismissal requested is without prejudice, the Court is to consider four factors when determining whether to grant a motion. They include "the plaintiff's diligence in bringing the motion; any 'undue vexatiousness' on plaintiff's part; the extent to which the suit has progressed, including the defendant's effort and expense in preparation for trial; the duplicative expense of relitigation; and the adequacy of plaintiff's explanation for the need to dismiss." *Zagano v. Fordham University*, 900 F.2d 12, 14 (2d Cir.1990). By contrast, where, as here, a plaintiff requests that the claims be dismissed with prejudice, the *Zagano* factors do not apply. *Williams v. Johnson*, 2021 WL 185413 at *3 (S.D.N.Y. 2021) (BCM).

Plaintiff has conferred with Mr. Steven Yuniver, counsel for Defendants Elite Palace, LLC and Abhi Vaynshteyn. Mr. Yuniver appeared in this action on behalf of these defendants. [ECF 21] On January 13, 2022, these Defendants were granted an extension of time by the Court to answer, until February 21, 2022 [ECF. These Defendants do not oppose the relief requested herein.

Plaintiff has conferred with Ms. Saradja Paul, in-house counsel for Defendants Simon Alishaev and 6902 Garfield Avenue LLC. No notice of appearance or extension of time to respond to the complaint has been filed. These Defendants do not oppose the relief requested herein.

Plaintiff has conferred with Mr. Mikhail Usher, of the Usher Law Group P.C., counsel for Defendant Igor Tsan. No notice of appearance or extension of time to respond to the complaint has been filed. This Defendant does not oppose the relief requested herein.

A Proposed Order in Word format has been forwarded to the Court via email.

Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff requests that the Court order dismissal with prejudice of Defendants Elite Palace, LLC, Abhi Vaynshteyn, Simon Alishaev, 6902 Garfield Avenue LLC and Igor Tsan, without fees or costs to any party.

Respectfully submitted,

/s/ Jillian T. Weiss

Jillian T. Weiss

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